

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 46

INTRODUCER: Senator Hutson

SUBJECT: Craft Distilleries

DATE: January 25, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 46 revises the licensing requirements for craft distilleries. It creates s. 565.02(12), F.S., to provide a quota license exemption for certain craft distilleries to qualify for a vendor's license. The bill:

- Allows a craft distillery located in a destination entertainment venue (DEV), as defined by the bill, to qualify for a vendor's license for the sale of beer, wine, and liquor to consumers, including alcoholic beverage products from other manufacturers.
- Requires a DEV to have an indoor event capacity of at least 150 persons and an outdoor event capacity of at least 1,000 persons.
- Limits the number of craft distilleries that may be licensed as a vendor in a community redevelopment area (CRA) to no more than three craft distilleries, but the craft distilleries must be located in the same DEV, must share a common ownership, and must produce at least 50,000 gallons combined.
- Requires the DEV to be owned by a person or consortium of persons having a direct or indirect ownership interest in the craft distilleries located within the DEV.
- Prohibits a craft distillery licensed as a vendor from making package sales for off-premises consumption and making deliveries or shipments of alcoholic beverages, unless the shipment or delivery is authorized for craft distilleries that are not licensed as a vendor. (Current law and the bill permit a craft distillery to sell its own distilled spirits to consumers for off-premises consumption.)
- Clarifies that alcoholic beverages not manufactured at the craft distillery must be obtained through a distributor.

The bill also clarifies that the Beverage Law does not prohibit other alcoholic beverage vendors, such as a restaurant, from leasing its licensed premises within the DEV, provided the terms of the lease are based on fair market value for comparable property. This provision is based on Tied

House Evil concerns which prohibit manufacturers from providing gifts or financial aid to a vendor or having a direct or indirect financial interest in a vendor.¹

The bill amends the craft distillery requirements in s. 565.03, F.S., to:

- Increase the production limit to qualify as a craft distillery from 75,000 gallons per calendar year to 200,000 gallons per calendar year.
- Limit the amount of distilled spirits that may be transferred to the craft distillery's souvenir gift shop for sale to consumers to 75,000 gallons per calendar year.
- Define the term "common ownership" to mean "having a direct or indirect financial interest in two or more distilleries by the same person."
- Clarify that a minimum of 60 percent of the craft distillery's total branded products must be distilled in this state and contain one or more Florida agricultural products.
- Allow a maximum of 10 craft distilleries licenses under common ownership, consisting of four with a production cap of 250,000 gallons and six with a production cap of 50,000 gallons.
- Permit craft distilleries to sell distilled spirits manufactured on the premises to consumers by the drink or by package.
- Require craft distilleries to only sell directly to consumers in face-to-face transactions.
- Repeal the six individual container limit on sales of each of the craft distillery's branded products to a consumer at a craft distillery's souvenir gift shop.
- Prohibit craft distilleries from shipping alcoholic beverages to consumers.

The bill allows craft distilleries to qualify for a permit to conduct tastings at Florida fairs, trade shows, farmers markets, expositions, and festivals.

The bill provides an effective date of July 1, 2021.

II. Present Situation:

Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation administers and enforces² the Beverage Law,³ which regulates the manufacture, distribution, and sale of wine, beer, and liquor.⁴ The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

Three-Tier System

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a "three-tier system." The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages. The distributor obtains the beverages from the manufacturer and delivers them to the vendor. The

¹ See s. 561.42, F.S.

² Section 561.02, F.S.

³ Section 561.01(6), F.S., provides that the "Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

⁴ See s. 561.14, F.S.

vendor (retailer) makes the ultimate sale to the consumer. Manufacturers and distributors may not sell directly to retailers or directly to consumers.

Generally, Florida follows the three-tier system. Only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁵ Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.⁶ Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.⁷

Tied House Evil Prohibitions

The system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.⁸ Activities are heavily regulated to prevent a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor.

Three-Tier System Exceptions

Exceptions to the three-tier regulatory system permit in-state wineries,⁹ breweries,¹⁰ and craft distilleries to sell directly to consumers.¹¹ Restaurants licensed as vendors (brew pubs) may manufacture a limited quantity of malt beverages and sell directly to consumers for consumption on the licensed premises of the restaurant.¹²

A winery, even if licensed as a distributor,¹³ may be licensed as a vendor for a licensed premises situated on property contiguous to the manufacturing premises of the winery. A winery may not be issued more than three vendor licenses.¹⁴

Quota Licenses

Section 561.20, F.S., limits, by county, the number of alcoholic beverage licenses that may be issued that permit the sale of liquor (distilled spirits), to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as “quota” licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses can also be issued when a county initially changes from a county which does not permit the sale of intoxicating liquor to one that does permit their sale. The quota license is the only

⁵ Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

⁶ Section 561.22, F.S.

⁷ Sections 563.022(14) and 561.14(1), F.S.

⁸ Jessica C. Starns, *The Dangers of Common Ownership in an Uncommon Industry, Alcohol Policy in America and the Timeless Relevance of Tied-House Restrictions*, (2017) available at: <https://www.centerforalcoholpolicy.org/wp-content/uploads/2017/03/The-Dangers-of-Common-Ownership-in-an-Uncommon-Industry.pdf> (last visited Jan. 19, 2021).

⁹ See s. 561.221(1), F.S.

¹⁰ See s. 561.221(2), F.S.

¹¹ See s. 565.03, F.S.

¹² See s. 561.221(3), F.S.

¹³ Section 561.14(1), F.S., permits manufacturers to distribute at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.

¹⁴ See s. 561.221(1), F.S.

alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation. A person, firm, or corporation may not have an interest, directly or indirectly, in more than 30 percent of the number of quota licenses in a county.¹⁵

Quota License Exceptions

Current law permits certain types of businesses or persons to be licensed sell beer, wine, and liquor without any limitation on the number of such licenses which may be issued in a county, i.e., such licenses are not subject to the quota in s. 561.20, F.S. Quota license exceptions are known as “special licenses.”

Section 561.20(2), F.S., provides several exceptions to the number of licenses that permit the sale of beer, wine, and distilled spirits. The exceptions include restaurants, caterers, hotels and motels, specialty centers built on government-owned land, bowling establishments, and airports.

The Beverage Law provides a limited exception to the quota license limitation to permit the division to issue an alcoholic beverage license (for the sale of beer, wine, and liquor) to:

- An operator of railroads or sleeping cars and a vendor in railroad transit stations.¹⁶
- Operators of steamships and steamship lines, buses and bus lines, or airplanes and airlines engaged in interstate or foreign commerce or plying between fixed terminals and upon fixed schedules in this state.¹⁷
- Persons associated together as a chartered or incorporated club, if not organized for the purpose of evading license taxes and meeting certain conditions, including any golf club operated by or on behalf of any incorporated municipality in this state, and any veterans' or fraternal organization of national scope.¹⁸
- A caterer at a horse or dog racetrack or jai alai fronton.¹⁹
- A vendor who operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex and meeting specified conditions.²⁰
- A marine exhibition park complex meeting specified conditions.²¹
- A state-chartered legal entity not for profit organized principally for the purpose of supporting or managing the affairs of a symphony orchestra.²²
- The operator of a passenger vessel engaged exclusively in foreign commerce.²³
- A state-chartered legal entity not for profit organized principally for the purpose of operating a theater with live performances and not fewer than 100 seats.²⁴
- The John and Mable Ringling Museum of Art direct-support organization.²⁵

¹⁵ Section 561.20(6), F.S.

¹⁶ Section 565.02(2), F.S.

¹⁷ Section 565.02(3), F.S.

¹⁸ Section 565.02(4), F.S.

¹⁹ Section 565.02(5), F.S.

²⁰ Section 565.02(6), F.S.

²¹ Section 565.02(7), F.S.

²² Section 565.02(8), F.S.

²³ Section 565.02(9), F.S.

²⁴ Section 565.02(10), F.S.

²⁵ Section 565.02(11), F.S.

Distilleries and Craft Distilleries

Section 565.01, F.S., defines the terms “liquor,” “distilled spirits,” “spirituous liquors,” “spirituous beverages,” or “distilled spirituous liquors” to mean “that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.”

A “distillery” is a manufacturer of distilled spirits,²⁶ and a “craft distillery” is a licensed distillery that produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises. A distillery must notify the division in writing of its decision to qualify as a craft distillery.²⁷

All distilleries engaged solely in the business of manufacturing distilled spirits, or engaged in the business of blending and rectifying²⁸ distilled spirits, must pay a state license tax for each plant or branch operating in Florida. Distilleries pay \$4,000 annually for the license tax and craft distilleries pay \$1,000. Persons who engage in the business of distilling spirits may also rectify and blend spirituous liquors without paying an additional license tax.²⁹

Retail Sales by Distilleries

A craft distillery is allowed to sell to consumers branded products³⁰ distilled on the licensed premises. The products must be in factory-sealed containers that are filled at the distillery and sold for off-premises consumption.³¹ The sales must occur at the distillery’s souvenir gift shop located on private property contiguous to the licensed distillery premises.³² The craft distillery is not required to obtain, in addition to its manufacturer’s license, a vendor’s license in order to sell distilled spirits to consumers.

A craft distillery must report to the division within five business days after it has reached the 75,000-gallon production limit and cease making sales to consumers on the day after it reaches the production limit.³³

A craft distillery may not ship, arrange to ship, or deliver distilled spirits to consumers, except in a face to face transaction. However, a craft distillery may ship, arrange to ship, or deliver distilled spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state and federal bonded warehouses, and exporters.³⁴

A craft distillery may not transfer its license or any ownership interest to any individual or entity with a direct or indirect interest in another distillery licensed in any other state, territory, or

²⁶ Section 565.03(1)(c), F.S.

²⁷ Section 565.03(1)(b), F.S.

²⁸ Merriam-Webster defines rectify as the purification (of alcohol) especially by repeated or fractional distillation, *available at* <http://www.merriam-webster.com/dictionary/rectify> (last visited Feb. 11, 2020).

²⁹ Section 565.03(3), F.S.

³⁰ Section 565.03(1)(a), F.S., defines “branded product” to mean “any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or federal regulations.”

³¹ Section 565.03(2)(c), F.S.

³² *Id.*

³³ Section 565.03(2)(c)3., F.S.

³⁴ Section 565.03(2)(c)4., F.S.

country.³⁵ However, a craft distillery may be affiliated with another distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or in any other state, territory, or country.³⁶

A craft distillery must submit beverage excise taxes on distilled spirits sold to consumers in its monthly report to the division.³⁷

Declaratory Statement

On January 19, 2018, the division issued a declaratory statement interpreting s. 565.03(2)(c), F.S., to permit a craft distillery to sell to consumers, at its souvenir gift shop, a product comprised of a blend of liquors distilled on the premises of the craft distillery and liquors distilled by other manufacturers away from the premises. The craft distillery may then, at the craft distillery, fill individual containers with the final, blended liquor product for sale at its souvenir gift shop.³⁸ However, a craft distillery may not sell to consumers a product comprised of a blend of only liquors distilled by other manufacturers away from the craft distillery's licensed premises.³⁹

Deliveries by Licensees

Section 561.57(1), F.S., permits an alcoholic beverages vendor to make deliveries away from its place of business for sales made at the licensed place of business. Telephone, electronic, or mail orders received at a vendor's licensed place of business are construed as a sale actually made at the vendor's licensed place of business.⁴⁰

Deliveries made by a manufacturer, distributor, or a vendor away from its place of business may only be made in vehicles owned or leased by the vendor, or in a third-party vehicle pursuant to a contract with a third party, including, but not limited to, common carriers.

By acceptance of an alcoholic beverage license and the use of vehicles owned by or leased by the vendor, the vendor agrees the vehicle is subject to be inspected and searched without a search warrant by employees of the division or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws.⁴¹

³⁵ Section 565.03(2)(c)5., F.S.

³⁶ Section 565.03(2)(c)6., F.S.

³⁷ Section 565.03(5), F.S. Section 565.12, F.S., requires manufactures and distributors to pay an excise tax on alcoholic beverages, with the tax rate per gallon depending on the percent of alcohol by volume of the beverage. Section 565.13, F.S., requires every distributor selling spirituous beverages within the state to pay the tax to the division monthly on or before the 10th day of the following month.

³⁸ Final Order on Petition for Declaratory Statement, *In Re: Petition for Declaratory Statement Before the Division Of Alcoholic Beverages and Tobacco, On behalf of Drum Circle Distilling, LLC*, DS 2017-071 (DABT Case No. 2017-052675), January 19, 2018, (on file with Senate Committee on Regulated Industries).

³⁹ *Id.*

⁴⁰ Section 561.57(1), F.S.

⁴¹ Section 561.57(2), F.S.

Common carriers⁴² may transport alcoholic beverages.⁴³ The recipient's age and identity must be verified at the time of delivery. All deliveries by a licensee or a third-party must comply with s. 562.11, F.S., which prohibits selling, giving, serving, or permitting to be served alcoholic beverages to a person under 21 years of age.⁴⁴

A "permit carrier" is a licensee authorized to make deliveries under s. 561.57, F.S.⁴⁵

Alcoholic Beverage Tastings

Section 561.42(14)(e), F.S., prohibits sampling activities that include the tasting of beer at a vendor's premises that is licensed for off-premises sales only. This prohibition applies to manufacturers, distributors, importers, brand owners or brand registrants of beer, and their sales agents or sales persons.

Section 564.08, F.S., permits licensed wine distributors and vendors to conduct wine tastings at any licensed premises authorized to sell wine or spirituous beverages by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the wine tasting is limited to and directed toward the general public of the age of legal consumption.

A certified Florida Farm Winery⁴⁶ may be issued a permit by the division to conduct tasting and sales of wine produced by certified Florida Farm Wineries at Florida fairs, trade shows, expositions, and festivals. The certified Florida Farm Winery must pay all entry fees and must have a winery representative present during the event. The permit is limited to the length of the event.⁴⁷

Section 565.17, F.S., permits licensed distributors of spirituous beverages and vendors to conduct spirituous beverage tastings at any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without violating s. 561.42, F.S., provided that the conduct of the spirituous beverage tasting is limited to and directed toward the general public of the age of legal consumption.

Community Redevelopment Areas

The Community Redevelopment Act of 1969 authorizes a county or municipality to create a community redevelopment agency (CRA) as a means of redeveloping slums and blighted areas.⁴⁸ The act defines a "blighted area" as an area in which there are a substantial number of deteriorated structures causing economic distress or endangerment to life or property and two or

⁴² Section 561.01(19), F.S., defines a "common carrier" as "any person, firm, or corporation that undertakes for hire, as a regular business, the transportation of persons or commodities from place to place, offering its services to all who choose to employ it and pay its charges."

⁴³ Section 561.57(5), F.S.

⁴⁴ Section 561.57(6), F.S.

⁴⁵ Section 561.01(20), F.S.

⁴⁶ Section 599.004, F.S., establishes the Florida Farm Winery Program within the Department of Agriculture and Consumer Services. The requirements for certification include that a winery produce or sell less than 250,000 gallons of wine annually and that 60 percent of the wine produced is made from state agricultural products.

⁴⁷ Section 561.221(1)(b), F.S.

⁴⁸ Chapter 163, F.S., part III.

more of the factors listed in s. 163.340(8), F.S., are present. However, an area may also be classified as blighted if one factor is present and all taxing authorities with jurisdiction over the area agree that the area is blighted by interlocal agreement or by passage of a resolution by the governing bodies.⁴⁹

Either a county or a municipal government may create a CRA. A county or municipality may create a CRA upon the adoption of a finding of necessity and a finding that a CRA is necessary for carrying out the community redevelopment goals embodied by the act.⁵⁰ A CRA created by a county may only operate within the boundaries of a municipality when the municipality has concurred by resolution with the community redevelopment plan adopted by the county. A CRA created by a municipality may not include more than 80 percent of the municipality if it was created after July 1, 2006.⁵¹

The act allows the local governing body creating a CRA to choose between two structures for the agency governing board. One option is to appoint a board of commissioners consisting of five to nine members serving four-year terms.⁵² The second option is for the local governing body to appoint itself as the agency board of commissioners.⁵³ A community redevelopment plan must be in place before a CRA can engage in operations.⁵⁴

There are currently 222 active community redevelopment agencies in Florida.⁵⁵

III. Effect of Proposed Changes:

The bill creates s. 565.02(12), F.S., to provide a quota license exemption for certain craft distilleries to qualify for a vendor's license for the sale of beer, wine, and liquor. The bill:

- Allows a craft distillery located in a destination entertainment venue (DEV), as defined by the bill, to qualify for a vendor's license for the sale of beer, wine, and liquor to consumers, including alcoholic beverage products from other manufacturers.
- Requires a DEV to have an indoor event capacity of at least 150 persons and an outdoor event capacity of at least 1,000 persons.
- Limits the number of craft distilleries that may be licensed as a vendor in a community redevelopment area (CRA) to no more than three craft distilleries, but the craft distilleries must be located in the same DEV, must share a common ownership, and must produce at least 50,000 gallons combined.
- Requires the DEV to be owned by a person or consortium of persons having a direct or indirect ownership interest in a craft distillery located within the DEV.
- Prohibits a craft distillery licensed as a vendor from making package sales for off-premises consumption and making deliveries or shipments of alcoholic beverages, unless the shipment or delivery is authorized for craft distilleries that are not licensed as a vendor.

⁴⁹ Section 163.340(8), F.S.

⁵⁰ Section 163.356(1), F.S.

⁵¹ Section 163.340(10), F.S.

⁵² Section 163.356(2), F.S.

⁵³ Section 163.357(1)(a), F.S.

⁵⁴ Section 163.360(1), F.S.

⁵⁵ Dept. of Economic Opportunity, Special District Accountability Program, Official List of Special Districts Online, available at: specialdistrictreports.floridajobs.org/webreports/criteria.aspx (last visited January 23, 2021).

- Clarifies that alcoholic beverages not manufactured at the craft distillery must be obtained through a distributor.

The bill also clarifies that the Beverage Law does not prohibit other alcoholic beverage vendors, such as a restaurant, from leasing its licensed premises within the DEV, provided the terms of the lease are based on fair market value for comparable property. This provision is based on Tied House Evil concerns which prohibit manufacturers from providing gifts or financial aid to a vendor or having a direct or indirect financial interest in a vendor.⁵⁶

The bill amends the craft distillery requirements in s. 565.03, F.S., to:

- Increase the production limit to qualify as a craft distillery from 75,000 gallons per calendar year to 200,000 gallons per calendar year.
- Limit the amount of distilled spirits that may be transferred to the craft distillery's souvenir gift shop for sale to consumers to 75,000 gallons per calendar year.
- Define the term "common ownership" to mean "having a direct or indirect financial interest in two or more distilleries by the same person."
- Clarify that a minimum of 60 percent of the craft distillery's total branded products must be distilled in this state and contain one or more Florida agricultural products.
- Allow a maximum of 10 craft distilleries licenses under common ownership, consisting of four with a production cap of 250,000 gallons and six with a production cap of 50,000 gallons.
- Permit craft distilleries to sell distilled spirits manufactured on the premises to consumers by the drink or by package.
- Require craft distilleries to only sell directly to consumers in face-to-face transactions.
- Repeal the six individual container limit on sales of each of the craft distillery's branded products to a consumer at a craft distillery's souvenir gift shop.
- Prohibit craft distilleries from shipping alcoholic beverages to consumers.

The bill amends s. 565.17, F.S., to allow craft distilleries to qualify for a permit to conduct tastings at Florida fairs, trade shows, farmers markets, expositions, and festivals.

The bill provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁵⁶ See s. 561.42, F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may increase total sales revenue for craft distilleries by 1) allowing craft distilleries to sell their branded products to consumers by the drink and by 2) repealing the six individual container limit on sales of each of the craft distillery's branded products to a consumer at a craft distillery's souvenir gift shop.

The bill would provide additional sources of revenue for craft distilleries located in a community redevelopment area that qualify for a vendor's license, as specified in the bill.

C. Government Sector Impact:

Tax revenue from the sale of craft distillery products may increase if sales to consumers increase under this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 565.02, 565.03, and 565.17.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
